

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

(1) COLUMBIA CASUALTY)
COMPANY,)
)
Plaintiff,)
)
v.) Case No. _____
)
(1) LEXINGTON INSURANCE)
COMPANY,)
)
(2) ERC MANAGEMENT GROUP, LLC,)
)
(3) ERC PROPERTIES, INC.,)
)
(4) EDMOND HOUSING ASSOCIATES)
III, LIMITED PARTNERSHIP, d/b/a)
CROWNridge APARTMENTS, and)
)
(5) CASSIDAY JANE SHOLER,)
)
Defendants.

**COLUMBIA CASUALTY COMPANY'S
COMPLAINT FOR DECLARATORY JUDGMENT**

COMES NOW, COLUMBIA CASUALTY COMPANY ("Columbia"), Plaintiff, and files this Complaint for Declaratory Judgment against the Defendants, LEXINGTON INSURANCE COMPANY, ERC MANAGEMENT GROUP, LLC, ERC PROPERTIES, INC., EDMOND HOUSING ASSOCIATES III, LIMITED PARTNERSHIP, d/b/a CROWNridge APARTMENTS, and CASSIDAY JANE SHOLER, and states as follows:

1. Columbia brings this Complaint for Declaratory Judgment relief as allowed by 28 U.S.C. §§ 2201 and 2202 (Declaratory Judgments), for a determination of the

parties' rights and obligations under the policies that are the subject of the following lawsuit, with respect to the claims asserted: *Cassiday Jane Sholer v. ERC Management Group, L.L.C., et al.*, Case No. CJ-2008-9198, filed in the District Court of Oklahoma County, Oklahoma ("Underlying Lawsuit"). A copy of the First Amended Petition in the Underlying Lawsuit is attached as Exhibit "1".

PARTIES

2. Plaintiff, Columbia, is an Illinois corporation with its principal place of business in Illinois.

3. Defendant, Lexington Insurance Company ("Lexington"), is a Delaware corporation with its principal place of business in Massachusetts. Upon information and belief, Lexington may be served through the Oklahoma Insurance Department, P.O. Box 53408, Oklahoma City, Oklahoma, 73152-3408.

4. Defendant, ERC Management Group, LLC ("ERC Management"), is an Arkansas limited liability company with its principal place of business in Arkansas. ERC Management may be served through the Secretary of State, 2300 N. Lincoln Blvd., Suite 101, Oklahoma City, Oklahoma 73105.

5. Defendant, ERC Properties, Inc., ("ERC Properties"), is a company incorporated in Arkansas, with its principal place of business in Arkansas. Defendant, ERC Properties, Inc., may be served through its registered agent, Mark K. Stonecipher, 100 N. Broadway Ave., Suite 1700, Oklahoma City, Oklahoma, 73102.

6. Defendant, Edmond Housing Associates, III, Limited Partnership, d/b/a Crownridge Apartments (“Edmond Housing”), is an Oklahoma entity, with its principal place of business in Oklahoma. Edmond Housing may be served through its registered agent, Mark K. Stonecipher, 100 N. Broadway Ave., Suite 1700, Oklahoma City, Oklahoma, 73102.

7. Defendant, Cassidy Jane Sholer, is an individual who, upon information and belief, is a resident of Oklahoma County. Ms. Sholer may be served at her place of residence, 3157 Elmwood Avenue, Oklahoma City, Oklahoma, 73116. Ms. Sholer is the Plaintiff in the Underlying Lawsuit, and has an interest in this litigation as a potential judgment creditor of ERC Management, ERC Properties, and/or Edmond Housing.

JURISDICTION AND VENUE

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 (a).

9. This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332, because there is complete diversity of citizenship between the parties, and because the amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000. The relief requested by Plaintiff is authorized by 28 U.S.C. §§ 2201 and 2202 (Declaratory Judgments).

STATEMENT OF THE CASE

10. Columbia issued a Commercial General Liability (“CGL”) policy to ERC Management and ERC Properties under Policy No. 0223317295, effective from 12:01 a.m. on June 1, 2004, to 12:01 a.m. on June 1, 2005, (the “Columbia Policy”). A true and

correct copy of the Declarations of the Columbia Policy is attached as Exhibit "2". Edmond Housing is an additional insured under this policy by way of endorsement.

11. Lexington issued a CGL policy to ERC Management under Policy No. 0382098, effective from 12:01 a.m. on June 1, 2005, to 12:01 a.m. on June 1, 2006, (the "Lexington Policy"). Upon information and belief, a true and correct copy of the Lexington Policy's Declarations page is attached as Exhibit "3". ERC Properties and Edmond Housing are additional insureds under this policy by way of endorsement.

12. This is an insurance coverage dispute seeking a declaration of the rights and obligations of the parties under the above listed policies with respect to the Underlying Lawsuit.

UNDERLYING FACTS

13. On January 22, 2009, Cassidy Jane Sholer filed her First Amended Petition in the Underlying Lawsuit.

14. Ms. Sholer alleges in the First Amended Petition that on the evening of May 31, 2005, she visited a college classmate at the Crownridge apartment complex in Edmond, Oklahoma. There is a swimming pool located on the Crownridge complex's premises.

15. Ms. Sholer further alleges that because the gate to the pool was unlocked and the lights in the pool were activated, she proceeded into the pool area.

16. Ms. Sholer contends that because she saw no sign prohibiting diving, she dove into the pool, and suffered a C-5 lamina fracture, which resulted in numerous surgeries and incomplete quadriplegia.

17. The Edmond Fire Department was notified of the incident and Ms. Sholer's resulting injury by the receipt of a 911 call at 12:39 a.m. on June 1, 2005. Ms. Sholer's injury reportedly occurred 10 to 15 minutes prior to the call.

18. Colombia is presently defending ERC Management, ERC Properties, and Edmond Housing in the Underlying Lawsuit under a Reservation of Rights. Lexington is sharing the cost of defense with Colombia, pending resolution of the issues raised herein.

19. Ms. Sholer claims she has suffered, and will continue to suffer, physical, emotional and pecuniary damages, as well as numerous medical and other expenses.

20. In order for coverage to exist under the Columbia Policy, the alleged "bodily injury" must have occurred during the policy period. The Columbia Policy was in effect from 12:01 a.m. on June 1, 2004, through 12:01 a.m. on June 1, 2005.

BASIS FOR DECLARATORY RELIEF

21. In order for coverage to exist under the Columbia Policy, the alleged "bodily injury" must have occurred during the policy period. The Columbia Policy was in effect from 12:01 a.m. on June 1, 2004, through 12:01 a.m. on June 1, 2005.

22. The evidence shows that the bodily injury to Ms. Sholer occurred after 12:01 a.m. on June 1, 2005, which is after the expiration of the Columbia Policy and during the policy period of the Lexington Policy.

23. Accordingly, any coverage that may exist for the damages alleged in the Underlying Lawsuit is limited to coverage under the Lexington Policy.

24. Columbia seeks a declaration that it has no duty to indemnify ERC Management, ERC Properties, and Edmond Housing for the damages claimed in the

Underlying Lawsuit, because the alleged bodily injury occurred after the Columbia Policy expired, and during the policy period of the Lexington Policy.

PRAYER FOR RELIEF

WHEREFORE, Columbia respectfully requests that this Court enter judgment in its favor declaring:

- (1) that bodily injury to Ms. Sholer occurred after 12:01 a.m. on June 1, 2005;
- (2) that bodily injury to Ms. Sholer occurred after expiration of the Columbia Policy;
- (3) that Ms. Sholer's bodily injury occurred during the policy period of the Lexington Policy;
- (4) that Columbia has no duty to indemnify ERC MANAGEMENT GROUP, LLC, ERC PROPERTIES, INC., and EDMOND HOUSING ASSOCIATES III, LIMITED PARTNERSHIP, d/b/a CROWNridge APARTMENTS, for the damages claimed in the Underlying Lawsuit; and
- (5) that any potential commercial general liability coverage that may be available to ERC MANAGEMENT GROUP, LLC, ERC PROPERTIES, INC., and EDMOND HOUSING ASSOCIATES III, LIMITED PARTNERSHIP, d/b/a CROWNridge APARTMENTS for the damages claimed in the Underlying Lawsuit is provided by the Lexington Policy.

Colombia also prays for such other and further relief that the Court deems just and proper, including reasonable attorney's fees and the costs of this action.

s/Robert N. Naifeh, Jr.

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